IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.11.2006

CORAM:

THE HON'BLE MR. JUSTICE P. SATHASIVAM

AND

THE HON'BLE MR. JUSTICE S. TAMILVANAN

WRIT APPEAL No.2415 of 2003
and WAMP.No.3636 of 2003

Arumuga Gounder .. Appellant
[Petitioner in WP.No.1487/89].

vs.

1. The State of Tamil Nadu
   rep. by Secretary
   Housing and Urban Development Dept.,
   Fort St. George
   Chennai 9.

2. The Special Tahsildar
   (Land Acquisition)
   Housing Scheme No.II
   Coimbatore. .. Respondents
   [Respondents in -do-].

Writ Appeal filed under Clause 15 of the Letters Patent against the order of the learned Judge Mr. Justice E. Padmanabhan dated 08.11.2002 made in W.P.No. 1487 of 1998 presented under Article 226 of the Constitution of India, to issue a Writ of Certiorari calling for the records in connection with the impugned Notification issued under Section 4(1) of the Land Acquisition Act vide G.O.Ms.No.384, Housing and Urban Development Department dated 6.9.1996 published in Tamil Nadu Government Gazette dated 23.10.1996 and under Section 6 of the Act Vide G.O.Ms.No.397 Housing and Urban development Department dated 10.11.1997 published in the Tamil Nadu Government Gazette dated 11.11.1997 in respect of the petitioner's land in Survey No.331/1A in Kalapatti Village, Coimbatore North Taluk, Coimbatore district quash the same.

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For appellant : Mr. T.R. Rajagopalan,Sr.counsel
for Mr. T.R. Rajaraman

For respondents : Mr.P. Subramanian
Government Advocate

JUDGMENT

(Judgment of the Court was delivered by P. SATHASIVAM,J.)

The above writ appeal is directed against the order of the learned single Judge dated 08.11.2002 made in W.P.No.1487 of 1998, in and by which the learned Judge, dismissed the said writ petition challenging the land acquisition proceedings.

2. Heard the learned senior counsel for the appellant as well as the learned Government Advocate for the respondents.

3. According to the appellant/petitioner , he is the owner of the land measuring an extent of 1.32.0 hectares comprised in Survey No.331/1-A in Kalapatti Village, Coimbatore North Taluk. He is a small farmer, doing personal cultivation in the said land. While so, the first respondent issued a notification under Section 4(1) of the Land Acquisition Act,1894 (Central Act I of 1894) (in short "the Act"), seeking to acquire the lands of the petitioner and others in Kalapatti Village, Coimbatore Taluk for Tamil Nadu Housing Board. Though the petitioner is a owner of the land, he was not issued any notice for enquiry under Section 5-A of the Act. Before the learned Judge, it was contended that no notice had been served on the petitioner either in respect of notification under Section 4(1) or for enquiry under Section 5-A of the Act and since three modes of notification under Section 4(1) of the Act are mandatory and the petitioner was not given notice for enquiry under Section 5-A, the entire land acquisition proceedings are liable to be quashed. It is also brought to the notice of the learned Judge that the said infirmity has been specifically stated in the affidavit, but, admittedly, the respondents have not filed counter affidavit controverting the same. However, records were placed before the learned Judge and after verifying the records, the learned Judge accepted the endorsement made by the Field Assistant to the effect that the petitioner refused to receive notice, hence, the same was affixed. The learned senior counsel for the petitioner submitted that first of all in view of the specific assertion made in the affidavit with regard to non-service of notice, it is, but, proper on the part of the Department to file a counter affidavit. Secondly he submitted that affixture made after the alleged refusal is not in terms of Section 45 of the Act. In other words, according to the learned senior counsel, inasmuch as the respondents failed to adhere to Section 45 of the Act in service of notice, the affixture as claimed cannot be accepted and in any event it is not sufficient to hold that the land owner was duly served with notice for 4(1) Notification and 5-A Enquiry.

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4. In view of the above submissions, we verified the notice issued in Form-B, which is a notice intended for enquiry under Section 5-A of the Act. It is true that there is an endorsement to the effect that,

"வாங்க மறுத்துவிட்ட காரணத்தால் ஒட்டி சார்வு செய்யப்பட்டது.

பி.ரெய்சன், பல உதவியாளர்."

In this regard, it is relevant to refer Section 45 of the Act, which speaks about the Service of notice. As per the said provision, service of any notice shall be made by delivering or tendering a copy thereof signed, if it is a case of notice under Section 4, by the Officer concerned and in the case of any other notice, by or order of the Collector or the Judge. Sub-section (2) of Section 45 of the Act mandates that the service of such notice shall be made on the person therein named. Sub-section (3) thereof makes it clear that when such person cannot be found, the service may be made on any adult male member of his family residing with him, and, if no such adult male member is found, the notice may be served by affixing a copy on the outer door of the house in which the person therein named ordinarily dwells or carries on business, or by affixing a copy thereof in some conspicuous place in the Office of the Land Acquisition Officer or of the Collector or in the Court-house, and also in some conspicuous part of the land to be acquired. We have already extracted the endorsement made by the Field Assistant. It is not clear whether any attempt was made to serve on the adult male member of family of the petitioner and secondly, it is not clear whether the service by affixture was effected either in the house in which the petitioner resides or in the land or elsewhere. We have already referred to the fact that the respondents have not filed counter affidavit explaining their stand.

5. In this regard, it is useful to refer judgment of this Court relating to service of notice under Section 45 of the Act in the case of Ramiah Moopanar vs. State of Tamil Nadu reported in 2000 (1) CTC 117, in which, one of us (P.Sathasivam,J.) had an occasion to consider the said issue, and after referring Section 45 of the Act, held,

> "7. .... It is clear that as per sub-section 92) of Section 45 of the Act, all notices shall be served on the person concerned. When such person cannot be found, it is open to the authorities to effect service on any adult male member of the family residing with him and if no such adult male member is not found, the notice may be served by fixing a copy on the outer door of the house in which the person ordinarily dwells or carries on business, or by fixing a copy there in some conspicuous place in the office of the Land Acquisition Officer or of the Collector of in the court-house. In addition to the above mode of service, the officer is expected to affix a copy in some conspicuous part of the land to be acquired. There is no explanation

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> either in the counter affidavit or in the records regarding compliance of such course as mentioned in sub-section (3) of Section 45 of the Act. After holding that the land owner/petitioner herein was not in the village, no effort has been taken by the officer to serve a copy on the adult male member or affixed a copy on the outer door of the house in which the petitioner resides in the village. Affixing a copy in some conspicuous part of the land to be acquired is in addition to the affixture in the dwelling house or serving on the adult male member. Even otherwise, as per Proviso to sub-section (3) of Section 45, the Officer could have sent the notice by post in a letter addressed to the petitioner at his last known residence address or place of business and registered under Sections 28 and 29 of the Indian Post Office Act, 1898. Such recourse has not been followed by the respondents. In such a circumstances, I accept the first contention raised by the learned counsel for the petitioner and I hold that there was no proper service on notice in Form 3-A on the petitioner. Accordingly, he had lost the opportunity of filing his valid objections during enquiry under Section 5-A. As discussed, thought it is stated by the first respondent in para 3 of the counter affidavit that they received objections from the land owners, no details have been furnished, hence the statement is not hopeful to their own defence. "

We are satisfied that as explained above, such recourse has not been followed by the respondents. Similar view has been expressed by P.K. Misra,J. in A.S. Periasamy vs. State of Tamil Nadu (2004 (2) CTC 406).

6. The learned single Judge has not considered the above referred relevant aspects while accepting the endorsement of the Field Assistant. In view of our conclusion, we hold that the petitioner was not given an opportunity by issuing notice and the course adopted by the respondents is not acceptable; hence, the order of the learned single Judge dated 08.11.2002 made in W.P.No.1487 of 1998 is liable to be set aside.

7. In the normal circumstance, when the person concerned was not given an opportunity to participate in the enquiry, this Court would have permitted the respondents to proceed from the stage of enquiry; but, in the case on hand, it is brought to our notice that declaration under Section 6 was published on the last date of the limitation prescribed. In such circumstances, even if such permission is given, it would not be possible for the respondents to utilize the said opportunity. Apart from this, it is also brought to our notice that the entire Scheme, viz., Kalapatti Neighbourhood Scheme of the Housing Board has not been implemented till this date and that several orders have been passed by

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this Court quashing the acquisition proceedings. In such circumstances, we are not inclined to afford opportunity to the respondents to continue from the stage of 5-A enquiry.

Net result, the writ appeal is allowed. No costs.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

kh

To
1. The Secretary
Housing and Urban Development Dept.,
State of Tamil Nadu
Fort St. George
Chennai 9.

2. The Special Tahsildar
(Land Acquisition)
Housing Scheme No.II
Coimbatore.

+ 1 CC To Mr. T.R.Rajaraman, Advocate SR NO.53890

+ 1 CC to the Government Pleader SR NO 53870

Writ Appeal No.2415/2003

jrg(co)
Gp/20.11.

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